ered and that the defendant could have repudiated it in a few hours, his delay of five days was evidence of delivery and acceptance. *Hobbs* v. *Massasoit Whip Co.*, 158 Mass. 194, holds that silence and retention for an unreasonable time may warrant a finding of acceptance. *Pierson* v. *Crooks*, 115 N. Y. 539, holds this also. Conduct which imports acceptance is acceptance in the view of the law, whatever may have been the state of mind of the party. *O'Donnell* v. *Clinton*, 145 Mass. 461; *McCarthy* v. *Boston & Lowell Ry.*, 148 Mass. 550. While the cases cited in the leading opinion, like *Silkman Lumber Co.* v. *Hunholz*, 132 Wis. 610, and *Dorsey* v. *Pike*, 50 Hun 534, are good authorities for the proposition that some affirmative act other than mere possession is necessary to constitute an acceptance, yet there seems to be sound reasoning in the dissenting opinion that the delay worked an acceptance in such a case as the principal one.

SURETYSHIP—LEGALITY OF CONTRACT—AGREEMENT BY PRINCIPAL IN CRIMINAL BAIL BOND TO INDEMNIFY SURETY.—The intervener in condemnation proceedings seeks to prove a contract with the defendant G. whereby the property sought to be condemned should be held by the defendant K., as stake-holder, to indemnify the intervener against all loss he should sustain by reason of becoming surety on G.'s criminal bail bond, which bond was subsequently forfeited and satisfied out of the property of the intervener. *Held*, that the contract was void as against public policy. *United States* v. *Greene et al.* (1908), — C. C., W. D., Va. —, 163 Fed. 442.

This decision is in accordance with the weight of authority and reason. It is well settled that no contract of the principal in a criminal bail bond to indemnify his surety will be implied. *United States* v. *Ryder*, 110 U. S. 729; *Cripps* v. *Hartnoll*, 4 B. & S. 414; HIGHMORE, BAIL, p. 202. In *Cripps* v. *Hartnoll* there was an agreement by a father to hold the plaintiff harmless on his obligation as surety on the daughter's criminal bail bond, and the court allowed a recovery. The question in the case was whether or not the contract came within the Statute of Frauds, under the rule in *Green* v. *Cresswell*, 10 A. & E. 453, then the law in England. The rule in that case was that if the original party was under obligation to indemnify the surety, then the promise of a third person to hold harmless the surety was a promise to answer the debt, default, or miscarriage of another, and within the statute. To take the case of *Cripps* v. *Hartnoll*, supra, out of the statute it was necessary to hold that the obligation of the principal in the bail bond was to the Queen alone and not to the surety. Hence there would be no obligation to indemnify the surety for the consequences of non-appearance. The fundamental object of the bail bond is not to indemnify the state against the non-appearance of the defendant, but to insure such appearance. This differentiates criminal from civil bail. *United States* v. *Ryder*, supra. This case does not even contain dicta to support the implication in the syllabus that an express contract of indemnity will be enforced. *United States* v. *Simmons*, 47 Fed. 575, goes still further and holds that where it appears that the sureties have been indemnified by the principal their bond should not be accepted. Surely it would be against public policy

to allow sureties to enforce a contract which, if discovered by the court when the bail was offered, would have prevented its acceptance. *Herman* v. *Jeuchner,* 15 Q. B., Div. 561, does not allow the principal to recover money deposited as indemnity with the surety even after the time of the obligation has expired and the principal made no default, holding the contract of indemnity void. *Reynolds* v. *Harral,* 2 Strob. (S. C.) 87, is the only case found which supports the opposite doctrine. It is clearly erroneous, being founded on the authority of a civil bail case. There is no discussion of the merits of the question. The doctrine of the principal case that to allow a contract by the principal to indemnify his surety against his non-appearance takes away all incentive on the part of the surety to insure such appearance is unanswerable. The law demands the obligation of two persons.

THEATERS—NEGLIGENCE—INJURY TO SPECTATOR—SUFFICIENCY OF PLEADINGS.—Plaintiff, while a spectator in defendant's theater, was injured, owing to a performer on a bicycle having ridden off the stage into the audience. In an action to recover damages for injuries sustained, *held,* that an allegation of the declaration that it was the defendant's duty to have provided some protection to prevent such an event was not demurrable on the ground that the defendant was under no such obligation to the plaintiff. *Brown* v. *Batchellor* (1908), — R. I. —, 69 Atl. 295.

As bearing upon the degree of care which the law imposes upon the owners and managers of exhibitions and places of amusement, it appears to be settled that reasonable care in such cases is the measure of duty. *Williams* v. *Mineral City Park Association,* 128 Ia. 32; *Hart* v. *Washington Park Club,* 157 Ill. 9, 54 Ill. App. 480, 41 N. E. 620; *Fox* v. *Buffalo Park,* 21 App. Div. 321, 47 N. Y. Supp. 788; *Lane* v. *Minnesota State Agricultural Society,* 62 Minn. 175, 64 N. W. 382; *Schofield* v. *Wood,* 170 Mass. 415, 49 N. E. Rep. 636; *Dunn* v. *Brown County Agricultural Society,* 46 Ohio St. 93, 18 N. E. 496; *Mastad* v. *Swedish Brethren,* 83 Minn. 40, 85 N. W. 913; *Richmond & M. Ry. Co.* v. *Moore's Admr.,* 94 Va. 493, 27 S. E. 70; *Thompson* v. *Lowell, L. & H. St. R. Co.,* 170 Mass. 577, 49 N. E. 913; *Sebeck* v. *Plattdeutsche Volkfest Verein,* 64 N. J. L. 624, 46 Atl. 631. As to the duty of reasonable care to trespassers see *Herrick* v. *Wixom,* 121 Mich. 384, 80 N. W. 117. The decision of the lower court sustaining the demurrer in the principal case apparently is based upon the case of *Sebeck* v. *Plattdeutsche Volkfest Verein,* supra. This case, however, does not appear to be directly in point. In the latter case a person was witnessing an exhibition of fireworks and was injured by the premature explosion of a bomb, there being no barrier to prevent any of the fragments which might come from the explosion from injuring the plaintiff; nevertheless the court held that the only duty which the defendant owed to a spectator under the circumstances was to use reasonable care in selecting a person who is skilled in the manufacturing of fireworks and exhibitions thereof, and that a barrier which would insure perfect safety to those present would prevent the spectators from witnessing such exhibition, and that the dangers that would result